

# In the United States Court of Federal Claims

Sub-Master Docket No. 17-9001L

(Filed: January 18, 2019)

IN RE UPSTREAM ADDICKS AND  
BARKER (TEXAS) FLOOD-  
CONTROL RESERVOIRS

THIS DOCUMENT APPLIES TO:

ALL UPSTREAM CASES

## ORDER

Pending before the court is the government's renewed motion for a stay of case in light of lapse of appropriations, filed on January 15, 2019. In the motion, counsel for the government contends that the lack of funding is prejudicing their ability to prepare for the scheduled trial. The government argues this case does not fall within the exception for furloughed employees proscribed in 31 U.S.C. § 1342 and asks the court to stay all upcoming deadlines.

Plaintiffs oppose the government's motion, claiming a stay would impose an unnecessary burden on their already strained circumstances. In the alternative, the plaintiffs request that if a stay is granted, the court order the government to file its pre-trial memorandum currently due February 1, 2019. Plaintiffs also request the court schedule the earliest reasonable trial date after the Department of Justice receives its appropriation. (The lead agency involved, the Corps of Engineers, has no lapse in appropriations.)

A telephonic hearing on the issue was held today, January 18, 2019.

For good cause shown, the government's motion is granted in part and denied in part. Except for the government's pre-trial memorandum, currently due February 1, 2019, all deadlines in this case are suspended until Congress appropriates funds to the Department of Justice, but the case is not stayed. The court orders counsel for the government to file their pre-trial memorandum because of the close proximity to its already extended deadline, the prejudice otherwise visited upon the plaintiffs, and because the agency at issue, the Corps of Engineers, is not subject to the government shutdown. The court also believes the filing of this pre-trial memorandum will streamline the pre-trial process once funding is restored to the Department of Justice.

The court realizes this result will leave each party unsatisfied. Nonetheless, to balance the prejudice suffered by government counsel due to the lapse in appropriations and the hardships facing the plaintiffs, each side must recognize the burden experienced by the other.

The suspension affects the trial scheduled to begin on February 19, 2019 in Houston. Within 5 days after the restoration of funding to the Department of Justice, the parties shall file with the court a proposed schedule with deadlines for the government's pre-trial exhibit and witness lists along with proposed dates for the pretrial hearing and for trial.

It is so **ORDERED**.

s/ Charles F. Lettow

Charles F. Lettow  
Senior Judge